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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/211,507	12/14/1998	ALAN R. HIRSCH	054012-0009	9827

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EXAMINER	
TATE, CHRISTOPHER ROBIN	
ART UNIT	PAPER NUMBER
1654	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/211,507	HIRSCH, ALAN R.	
	Examiner	Art Unit	
	Christopher R. Tate	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-6,9-11,35,39-44 and 48-57* is/are pending in the application.

4a) Of the above claim(s) *53* is/are withdrawn from consideration.

5)☒ Claim(s) *52 and 57* is/are allowed.

6)☐ Claim(s) *1, 2, 4-6, 9-11, 35, 39-44, 50, 51, and 54-56* is/are rejected.

7)☒ Claim(s) *48 and 49* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The amendment filed January 13, 2003 is acknowledged and has been entered.

Newly submitted claim 53 is directed to an invention that is independent or distinct from the invention previous claimed (and examined) for the following reasons: Claim 53 is drawn to a method of altering blood flow to the vagina via administering (by inhalation) one or more (undefined) odorants, whereas all independent claims presented in the previously examined claims were drawn to a method of altering blood flow to the vagina via administering (by inhalation) a mixture of two defined odorants (i.e., a mixture of licorice-based and banana nut bread odorants, a mixture of licorice-based and cucumber odorants, a mixture of lavender and pumpkin pie odorants, and/or a mixture of baby powder and chocolate odorants). Accordingly, the method of new claim 53 does not necessarily require a mixture of two odorants (which was required by each independent claim previously presented) nor does it necessarily require any of the combinations of two odorants defined by the claims examined in the previous Office action - e.g., new claim 53 again reads upon administration (by inhalation) of a singular odorant such as Chanel No. 5 (see, e.g., Office action of January 2002 concerning this singular odorant). Since applicant has received an action on the merits for the previously presented invention, claim 53 is withdrawn from consideration. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 1, 2, 4-6, 9-11, 35, 39-44, 48-52, and 54-57 have been examined on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1, 2, 4-6, 9, 10, 35, 41, 43, 44, and 50 stand/are rejected under 35 U.S.C. 102(b) as being anticipated by the International Product Alert bulletin entitled "Poan Washable Cold Cream Manufacturer: Kurobara Honpo Category: Beauty Skin Care" (01 June 1994 - PROMT Abstract), or by McMath from Adweek's Marketing Week entitled "The Skin Trade Goes Natural" (27 August 1990 - PROMT Abstract) for the reasons set forth in the previous Office action which are restated below.

Each of the cited references teaches topically applied skin creams comprising cucumber and licorice extracts (odorants) therein (see PROMT abstracts). The extract odorants within the cited commercial cream products would inherently and necessarily be inhaled by individuals using these commercial products including female individuals (please note that it is well accepted in the art that a vast majority of persons using such skin cream products are female individuals). In addition, the cited products would inherently provide a suprathreshold but not irritant amount of the inhaled extract odors (i.e., based upon the definition provided on page 5, lines 8-19, of the instant specification, the natural cucumber and licorice extract odors within the cited commercial skin creams would inherently be within a concentration level detectable by a normosmic individual but not at a level so high or intense that it would be perceived as noxious or painful - thus, also within the claimed decismel level, within a suprathreshold but not irritant concentration, and/or at a concentration up to a suprathreshold but not irritant concentration, as claimed). Further, please note that the functional effects instantly claimed would be inherent to the reference odorant-containing products upon inhalation, including their ability to increase or decrease blood flow to the vagina since, as readily admitted by Applicant, women's response to

odors are not homogenous and women respond differently depending on their preferences of sexual activities and behaviors; and further, odorant mixtures including, e.g., licorice-based and cucumber odorants had the effect of increasing blood flow to the vagina in some women and decreasing blood flow to the vagina in other women (see, e.g., page 16, line 23 - page 17, line 27 of the instant specification). The cited skin cream products would inherently and necessarily be provided to consumers within an appropriate dispensable commercial container such as a pump jar, can, bottle, and/or other vessel having a cap.

Therefore, each of the cited references is deemed to anticipate the instantly claimed invention.

Applicant's arguments concerning the above rejection have been carefully considered but are not deemed to be persuasive of error in the above rejection. Applicant argues that neither of the moisturizing skin cream formulations of the above products describe anything about vaporous emissions of the described products, nor that such products would include a suprathreshold but not irritant amount of cucumber and licorice extract odors. However, without clear and convincing evidence to the contrary, the examiner maintains that the licorice and cucumber extracts (which one of skill in the art would reasonably discern as being incorporated therein so as to provided pleasant scents [odors] to such skin cream products) within the above skin cream products would inherently provide odorant concentrations within the levels instantly claimed.

Claims 1, 2, 4, 5, 9, 10, 11, 44, 50, 51, and 54-56 stand/are rejected under 35 U.S.C. 102(b) as being anticipated by a female individual inhaling a mixture of scents (odorants) provided by the candle products on display within a Yankee Candle Co. store (as evidence, see attached website information pertaining to the candle products sold by this franchise chain within its stores - please note that the Yankee Candle Co. has been in business since 1969 and its products sold in franchise stores within malls since 1989) for the reasons set forth in the previous Office action which are restated below.

The claims, as drafted, are deemed anticipated by a female customer entering a Yankee Candle Co. store (prior to Applicant's provisional filing date) and inhaling the scented candle fragrances (odorants) therein (including a female customer stopping in for a short period of time - e.g., about 1-3 minutes) because the odorants instantly claimed (e.g., pumpkin pie, lavender, banana nut bread, etc) are provided as fragrances within the openly displayed candle products sold by this store chain (as evidence - see attached website product information). Accordingly, mixtures of such odorants (including one or more of the odorant mixtures instantly claimed) would inherently be inhaled by female customers within these stores. In addition, the odorants released from the scented candles within a Yankee Candle Co. store (e.g., cucumber, banana nut bread, lavender, pumpkin pie, etc) would inherently provide a suprathreshold but not irritant amount of the inhaled odors (i.e., based upon the definition provided on page 5, lines 8-19, of the instant specification, the odors (scents) within the cited commercial candle products would inherently be within a concentration level detectable by a normosmic individual but not at a level so high or intense that it would be perceived as noxious or painful - thus, also within the claimed decismel level, within a suprathreshold but not irritant concentration, and/or at a concentration

up to a suprathreshold but not irritant concentration, as claimed). For the reasons discussed in the initial USC 102 rejection above, the claimed functional effects would also be inherent upon inhalation by a female individual within a Yankee Candle Co. store.

Therefore, a female individual inhaling a mixture of scents (odorants) such as those within the candle products (and as instantly claimed) on display within a Yankee Candle Co. store is deemed to anticipate the cited claims for the reasons set forth above.

Applicant's arguments concerning the above rejection have been carefully considered but are not deemed to be persuasive of error in the above rejection. Applicant argues that there is nothing in the cited Yankee Candle Co. reference that remotely suggests administering an odorant composition to alter blood flow to the vagina of a female individual. However, for the reasons set forth above, the claimed functional effect would be inherent. Applicant further argues that the candle products were actually sold in mall stores prior to Applicant's filing date of December 14, 1998. However, without clear and sufficient evidence to the contrary, based upon the large amount of time the Yankee Candle Co. was in business prior to Applicant's filing date, the above art rejection is deemed proper. Please also note that several candles sold by Yankee Candle Co. inherently contain anise or licorice-type/anise-type odorants as spices/ingredients therein and thus read upon a "licorice-based odorant".

Again, please note that limiting the cited independent claims so as to provide such odorant mixtures within certain types of claimed delivery devices and/or containers - i.e., blister pack, scratch-and-sniff odor patch, scented cloth, aerosol spray, pump-type spray, nasal spray - would overcome the art rejection immediately above (concerning the Yankee Candle Co.).

Claim Rejections - 35 USC § 103

Claims 1, 2, 4-6, 9-11, 35, 39-44, and 50 stand/are rejected under 35 U.S.C. 103(a) as being unpatentable over the International Product Alert bulletin entitled "Poan Washable Cold Cream Manufacturer: Kurobara Honpo Category: Beauty Skin Care" (01 June 1994 - PROMT Abstract), and McMath from Adweek's Marketing Week entitled "The Skin Trade Goes Natural" (27 August 1990 - PROMT Abstract) for the reasons set forth in the previous Office action which are restated below.

The references are relied upon for the reasons discussed *supra*.

Based upon the beneficial teachings provided by the cited references with respect to the commercial skin care products disclosed therein, it would have been obvious to one of ordinary skill in the art at the time to claimed invention was made to provide such female-oriented commercial skin cream products within one or more conventional, easy-to-use dispensable containers/vessels (such as those claimed) commonly employed within the skin care cosmetic art. In addition, it would have been obvious for a female individual to apply such skin cream products (and thus inhale the natural cucumber and licorice extract odorants contained therein) for the amount of time instantly claimed (e.g., 1-3 minutes) as this time range is considered a typical, customary time period for such topical application.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Applicant's arguments concerning the above rejection have already been addressed under the USC 102 rejection over the same cited references.

Claim Objections

Claims 48 and 49 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

To hasten prosecution (and to avoid any further potential restriction/election of species requirements), it is suggested that claim 48 or 49 be incorporated into all independent claims (other than independent claims 52 and 57, which are allowable). A method of altering blood flow to the vagina of a female via administering by inhalation to the female an odorant composition comprising a concentration of a mixture of odorants selected from the four combination of odorants instantly claimed/examined, whereby either of the screening assays set forth in claim 48 or in claim 49 is performed on the female subject, is neither taught nor reasonably suggested by the prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (571) 272-0970. The examiner can normally be reached on Mon-Thur, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher R. Tate
Primary Examiner
Art Unit 1654